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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,922	06/15/2000	Laurence Roussell	759-009473-US(PAR)	9201

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

9

DATE MAILED: 04/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC

Office Action Summary

Application No.

09/594922

Applicant(s)

Roussee Et Al

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 10-19-00, 12-18-00, 1-24-02.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-34 is/are pending in the application.
- Of the above claim(s) 29-34 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-28 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Claims 29-34 stand withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 8.

Applicant's traversal^{al} has been considered and is partially convincing. ^{As} a result, claims 1-28 are hereby examined. However, claims 29-34 remain non-elected since the apparatus claimed therein can be used to process raw materials other than fish components, e.g., poultry, beef or pork material.

2. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
 1. Field of the Invention.
 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (I) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing (see 37 CFR 1.821-1.825).

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3.

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a). The title of the invention should be placed at the top of the first page of the specification. It should be brief but technically accurate and descriptive, preferably from two to seven words.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) Reference to a "Microfiche Appendix": See 37CFR 1.96(c) and MPEP § 608.05. The total number of microfiche and the total number frames should be specified.
- (e) Background of the Invention: The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."
 - (2) Description of the Related Art: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (f) Brief Summary of the Invention: A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.

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- (g) Brief Description of the Several Views of the Drawing(s): A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (h) Detailed Description of the Invention: A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. This item may also be titled "Best Mode for Carrying Out the Invention." Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (I) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet. (37 CFR 1.52(b)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps.
- (j) Abstract of the Disclosure: A brief narrative of the disclosure as a whole in a single paragraph of 250 words or less on a separate sheet following the claims.
- (k) Drawings: See 37 CFR 1.81, 1.83-1.85, and MPEP § 608.02.
- (l) Sequence Listing: See 37 CFR 1.821-1.825.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yueh (3,863,017).

Yueh discloses preparation of a fabricated seafood product by mixing fish paste and fish fibers, shaping by molding or extruding, heating by steaming and then cooling. Additional components may be included in the product, e.g. color, starch, egg white. Finding the optimum size of the fibers, amount of each component, shape of the final product and the optimum processing parameters would require nothing more than routine experimentation by one reasonably skilled in this art.

Moreover, new recipes or formulas which involve addition or elimination of common ingredients, or for treating them in ways which differ ^{from} ~~the~~ former practice, do not amount to invention merely because it is not disclosed that no one else ever did what applicant did. Applicant must establish coaction or cooperation between ingredients which products a new, unexpected and useful function (In re Levin, 84 USPQ 232).

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 1-4 and 6-28 are misdescriptive in reciting "characterized in that", which should be changed to "wherein". Claims 1-28 are indefinite in not reciting into what the individual ~~fibers~~ fibers are incorporated (claims 1 and 2, line 2). Claims 1-28 are indefinite since it is not clear how the macroscopic fibers (claim 1, line 6) become microscopic fibers (claim 1, last line). Further, since claims 1-5 are product claims, only the final product properties should be recited, without the presence of intermediate properties, as may occur in a method claim. There is no antecedent basis in claim 1 for "the fibrous material, obtained by extrusion cooking" (claim 1, lines 5-6). Claim 3 is indefinite in not reciting what is intended by "it" (line 1); in the use of the meaningless terms "other shapes" and "in some cases" and in reciting a genus and species thereof in ~~a single~~ claim, i.e., "over 30% . . . 60%". Similarly, the following claims are indefinite as to scope in reciting a genus and species thereof in a single claim: claims 4, 7, 8b, 9, 11-13, 15, 16, 18, 20 and 24. Claim 5 is indefinite since it is not clear ^{to} what "incorporating" (line 5) refers ^{and since it is not understood how the} preparation can be in all of the forms recited therein. Claim 7 is indefinite since it is not clear what is intended by "cutting type process". Claim 8 is misdescriptive in failing to recite positive method steps. Claim 10 is indefinite since it is not understood if all of the steps in lines 3-4 occur and if so, how? How does "separated" (line 3) differ ~~from~~ "separation" (line 4)? Claim 12 is indefinite since it is not clear what is intended by "essentially comprised" and "etc. and, in some cases". Claim 14 is indefinite since it is not known if each of the recited components are present in the product. Claim 16 is indefinite since it is not known if the steps therein are different from or the same as those in claim 6. Claim 17 is indefinite since it is not known to what "a moisture content below 80%"

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refers and reciting "possibly enriched". Claim 19 is indefinite in reciting "in some cases". Claim 22 is indefinite in reciting improper Markush language, i.e., "the group comprised of". Claim 25 is indefinite since it is not clear what is intended by "regulated . . . 50%". There is no antecedent basis in claim 26 for "the forms obtained" (claim 27). Claim 27 is also indefinite in reciting "either. . . material" (lines 2-3) since this language is unclear. Claim 28 is indefinite in reciting the meaningless term "essentially providing". Also, in claim 28, "the" should be added before "microwave" (lines 2 and 5) and before "steam" (lines 4 and 6), and "to" (line 6) should be changed to "with". Corrections are required without new matter.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday-Friday from 10 AM to 7:30 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3929. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Corbin:mv

April 16, 2002


ARTHUR L. CORBIN
PRIMARY EXAMINER
4-19-02